



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Report by the East Side Improvement Committee

**MEETING DATE:** June 15, 1994


**PREPARED BY:** City Clerk

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**RECOMMENDED ACTION:** None required.

**BACKGROUND INFORMATION:** The East Side Improvement Committee has requested to make a report to the Lodi City Council. Colleen Dixon and Harry Marzolf will be present to make this report.

**FUNDING:** None required.

  
Jennifer M. Ferrin  
City Clerk

JMP

Attachment

APPROVED \_\_\_\_\_

THOMAS A. PETERSON  
City Manager



recycled paper

May 18, 1994

RECEIVED  
94 MAY 20 AM 9:49  
JENNIFER M. PERRIN  
CITY CLERK

Jennifer Perrin  
City Clerk/City of Lodi  
221 W. Pine Street  
Lodi, CA 95240

Dear Jennifer,

The Eastside Improvement Committee represented by myself and Harry Marzhoff would like to be included in the Council Meeting under Committee Reports for the June 1st meeting.

We would like to present the concept of re-enforcing the Drug Free Zone laws in the City of Lodi. We hope to get enough interest of the Council to bring it back to an Agenda item for action at a future meeting.

If you need further information, please contact me at (209) 339-9953 during the day.

Thank you for your attention to this matter.

Sincerely,

*Colleen Dixon*

Colleen Dixon  
Eastside Improvement Committee  
Chair/Neighborhood Watch

*Colleen called  
& asked to reschedule  
to 6/15/94.  
mt*

## CALIFORNIA HEALTH and SAFETY CODE

Sections 11353, 11353.1, 11353.5, 11353.6, 11353.7, 11380, 11380.1 referencing enhanced penalties for drug dealing in and around schools, parks, youth centers, etc.

Common term: *"Drug Free Zones"*

### **§ 11353. Adult inducing minor to violate provisions; use or employment of minors; punishment**

Every person 18 years of age or over, (a) who in any voluntary manner solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate any provision of this chapter or Section 11550 with respect to either (1) a controlled substance which is specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b), (c), or (g) of Section 11055, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, (b) who hires, employs, or uses a minor to unlawfully transport, carry, sell, give away, prepare for sale, or peddle any such controlled substance, or (c) who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, any such controlled substance to a minor, shall be punished by imprisonment in the state prison for a period of three, six, or nine years.

(Added by Stats.1972, c. 1407, p. 3013, § 3. Amended by Stats.1973, c. 1078, p. 2174, § 5, eff. Oct. 1, 1973; Stats.1976, c. 1139, p. 5080, § 68, operative July 1, 1977; Stats.1983, c. 790, § 6; Stats.1984, c. 1635, § 53; Stats.1985, c. 1377, § 1; Stats.1986, c. 1035, § 1; Stats.1986, c. 1044, § 6; Stats.1987, c. 970, § 4; Stats.1990, c. 1664 (A.B. 2645), § 1.5.)

#### **Historical and Statutory Notes**

The 1973 amendment designated subds. (a) to (c) and conditions (1) and (2) of subd. (a); inserted in subd. (a)(1) the words "specified in subdivision (b) or (c) of section 11054, specified in paragraph (11), (12), or (17), of subdivi-

sion (d) of section 11054, or specified in subdivision (b) or (c) of section 11055, or"; substituted, at the beginning of subd. (a)(2), the words "any controlled substance classified in Schedule III, IV, or V which is a narcotic drug"

for the words "classified in Schedule I or II, other than marijuana," substituted in subd. (a)(2), in two instances, the words "any such controlled substance" for the words "any controlled substance classified in Schedule I or II"; substituted in subds. (b) and (c), the words "any offense described in subdivision (d)" for the words "any felony described in this division or of any offense under the laws of any other state or the United States which, if committed in this state would have been punishable of a felony offense described in this division"; and added subd. (d).

Following the 1973 amendment, the section provided:

"(a) Every person 18 years of age or over who in any voluntary manner solicits, induces, encourages, or intimidates any minor with the intent that the minor shall knowingly violate any provision of this chapter or Section 11550 with respect to (1) a controlled substance which is specified in subdivision (b) or (c) of Section 11054, specified in paragraph (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055 or, (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, who hires, employs, or uses a minor to knowingly and unlawfully transport, carry, sell, give away, prepare for sale, or peddle any such controlled substance, or who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, any such controlled substance to a minor shall be punished by imprisonment in the state prison for a period of 10 years to life and shall not be eligible for release upon completion of sentence or on parole or any other basis until he has been imprisoned for a period of not less than five years in the state prison.

"(b) If such person has been previously convicted once of any offense described in subdivision (d), the previous conviction shall be charged in the indictment or information and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, he shall be imprisoned in the state prison for a period of 10 years to life and shall not be eligible for release upon completion of sentence or on parole or any other basis until he has been imprisoned for a period of not less than 10 years in the state prison.

"(c) If such person has been previously convicted two or more times of any offense described in subdivision (d), the previous convictions shall be charged in the indictment or information and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, he shall be imprisoned in the state prison for a period of 15 years to life and shall not be eligible for

release upon completion of sentence or on parole or any other basis until he has been imprisoned for a period of not less than 15 years in the state prison.

"(d) Any previous conviction of any of the following offenses, or of an offense under the laws of another state or of the United States which, if committed in this state, would have been punishable as such an offense, shall be charged pursuant to subdivision (b) or (c) of this section:

"(1) Any felony offense described in Section 11378, 11379, or 11380.

"(2) Any felony offense described in this division involving a controlled substance specified in subdivision (b) or (c) of Section 11054, specified in paragraph (10), (11), (12), or (17) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055.

"(3) Any felony offense described in this division involving a narcotic drug classified in Schedule III, IV, or V."

Resentencing for violations between March 7, 1973, and October 1, 1973, see Historical Note under § 11350.

The 1976 amendment deleted those provisions relating to punishment following "state prison" and substituted the words "for a period of three, four, or five years", and deleted subd. (b) to (d).

The 1983 amendment revised subdivision citations to reflect the addition of subd. (c) of § 11054.

The 1984 amendment substituted "paragraph (14), (15), or (20)" for "paragraph (11), (12), or (17)"; and made a nonsubstantive punctuation change.

The 1985 amendment deleted "knowingly" from "with the intent that the minor shall knowingly violate" and "knowingly and" from "who hires, employs, or uses a minor to knowingly and unlawfully transport".

The 1986 amendment by c. 1044, § 6, inserted a reference to subd. (f) of § 11054 relating to cocaine; and increased the punishment from 3, 4, or 5 years to 3, 5, or 7 years.

Amendment of this section by § 6.5 of Stats. 1986, c. 1044, failed to become operative under the provisions of § 36 of that Act.

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1987 amendment substituted "(b), (c), or (g) of Section 11055" for "(b) or (c) of Section 11055".

The 1990 amendment increased the term of imprisonment to three, six or nine years from three, five or seven years.

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## § 11353.1

tion of that section, the prior felony conviction may be pleaded. 3 Op.Atty.Gen. 269 (1944).

#### 18. Felony murder rule

Death resulting from commission of a felony such as selling or administering of narcotics to a minor constitutes murder of the second degree. *People v. Ponderstein* (1958) 330 P.2d 763, 51 C.2d 142.

#### 19. Judgment and sentence

Refusal to grant new trial, which was sought on ground of newly discovered evidence, on ground that testimony of witness, who was not available at trial but who was present at hearing on motion for new trial and who related that he was present at sale of narcotics but that defendant did not give or sell such narcotics to undercover agent, was incredible and that because of witness' claiming privilege against self-incrimination and thereby being unable to testify fully concerning meeting a different result at a new trial was not reasonably probable, was not abuse of discretion; fact that witness appeared and testified to a limited extent did not constitute a waiver of his privilege.

*People v. Hernandez* (1971) 96 Cal.Rptr. 854, 19 C.A.3d 411.

Acquittal on charge of furnishing, administering and giving a minor a preparation of heroin was not inconsistent with verdict of guilty on charge of using such minor for purpose of transporting heroin. *People v. De Paula* (1954) 276 P.2d 600, 43 C.2d 643.

Imposition of sentences, after conviction of furnishing minor with a narcotic on four separate counts, to four consecutive terms of imprisonment of five years each as to one defendant, and to two consecutive terms of imprisonment of five years with two concurrent terms of a like period as to another defendant, was within court's discretion and did not constitute cruel or inhuman punishment in constitutional sense. *People v. Tipton* (1954) 268 P.2d 196, 124 C.A.2d 213.

#### 20. Review

On appeal from conviction for sale of heroin to a minor, court could not reweigh evidence and draw inferences contrary to those drawn by the jury. *People v. Candalaria* (1954) 264 P.2d 71, 121 C.A.2d 686.

### § 11353.1. Enhancement of sentence imposed under § 11353

(a) Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of Section 11353, in addition to the punishment imposed for that conviction, shall receive an additional punishment as follows:

(1) If the offense involved heroin, cocaine, cocaine base, or any analog of these substances and occurred upon the grounds of, or within, a church or synagogue, a playground, a public or private youth center, or a public swimming pool, during hours in which the facility is open for business, classes, or school-related programs, or at any time when minors are using the facility, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for one year.

(2) If the offense involved heroin, cocaine, cocaine base, or any analog of these substances and occurred upon, or within 1,000 feet of, the grounds of any public or private elementary, vocational, junior high, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for two years.

(3) If the offense involved a minor who is at least four years younger than the defendant, the defendant shall, as a full and separately served enhancement to any other enhancement provided in this subdivision, be punished by

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**UNIFORM CONTROLLED SUBSTANCES**

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imprisonment in the state prison for one, two, or three years, at the discretion of the court.

(b) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(c) The additional punishment provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(e) As used in this section the following definitions shall apply:

(1) "Playground" means any park or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks.

(2) "Youth center" means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

(3) "Video arcade" means any premises where 10 or more video game machines or devices are operated, and where minors are legally permitted to conduct business.

(4) "Video game machine" means any mechanical amusement device, which is characterized by the use of a cathode ray tube display and which, upon the insertion of a coin, slug, or token in any slot or receptacle attached to, or connected to, the machine, may be operated for use as a game, contest, or amusement.

(5) "Within 1,000 feet of the grounds of any public or private elementary, vocational, junior high, or high school" means any public area or business establishment where minors are legally permitted to conduct business which is located within 1,000 feet of any public or private elementary, vocational, junior high, or high school.

(f) This section does not require either that notice be posted regarding the proscribed conduct or that the applicable 1,000-foot boundary limit be marked.

(Added by Stats.1989, c. 1178, § 1. Amended by Stats.1990, c. 1663 (A.B.3744), § 1; Stats.1990, c. 1664 (A.B.2645), § 2; Stats.1990, c. 1665 (S.B.2112), § 1.)

**Historical and Statutory Notes**

The 1990 amendment by c. 1665 rewrote subd. (a) which read:

"Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of Section 11353 with

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respect to any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b), (c), or (g) of Section 11055, or any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, where the defendant is at least four years older than the minor,

shall receive an additional punishment of one, two, or three years at the court's discretion."

The 1990 amendment also added subd. (e) containing definitions and subd. (f) relating to notice and marking boundaries.

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

### Library References

Drugs and Narcotics ⇨ 133.  
Infants ⇨ 20.  
WESTLAW Topic Nos. 138, 211.

C.J.S. Drugs and Narcotics §§ 225 to 229.  
C.J.S. Infants §§ 95 to 107.

### § 11353.5. Adult preparing for sale, selling, or giving controlled substance to minor upon school grounds, public playgrounds, churches, or synagogues; comparative ages of defendant and minor

Except as authorized by law, any person 18 years of age or older who unlawfully prepares for sale upon school grounds or a public playground, a church or a synagogue, or sells or gives away a controlled substance, other than a controlled substance described in Section 11353 or 11380, to a minor upon the grounds of, or within, any school, public playground, church, or synagogue providing instruction in kindergarten, or any of grades 1 to 12, inclusive, during hours in which those facilities are open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, or upon the grounds of a public playground during the hours in which school-related programs for minors are being conducted, or at any time when minors are using the facility where the offense occurs, shall be punished by imprisonment in the state prison for five, seven, or nine years. Application of this section shall be limited to persons at least five years older than the minor to whom he or she prepares for sale, sells, or gives away a controlled substance.

(Added by Stats.1983, c. 951, § 1. Amended by Stats.1986, c. 1038, § 1; Stats.1988, c. 1266, § 1; Stats.1990, c. 1663 (A.B.3744), § 2; Stats.1990, c. 1664 (A.B.2645), § 3; Stats.1990, c. 1665 (S.B.2112), § 2.)

### Historical and Statutory Notes

Section 2 of Stats.1983, c. 951, provides:  
"This act shall be known and may be cited as The School Safety Act of 1983."

The 1986 amendment substituted, in the first sentence, "or sells or gives away" for "sells, or gives away"; and changed the imprisonment at the end of the section from "5, 6, or 7 years" for "5, 7, or 9 years".

The 1988 amendment increased the age of the minor recipient of controlled substances from "14 years" to "18 years"; and added the last sentence relating to application of the section to persons at least five years older than the minor recipient.

The 1990 amendment by c. 1665 rewrote the section which read:

"Except as authorized by law, any person 18 years of age or older who unlawfully prepares for sale upon school grounds or a public playground, or sells or gives away a controlled substance to a minor under the age of 18 years upon the grounds of, or within, any school providing instruction in kindergarten, or any of grades 1 through 12, inclusive, during hours in which the school is open for classes or school-related programs, or upon the grounds of a public playground during the hours in which school-related programs for minors are

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## UNIFORM CONTROLLED SUBSTANCES

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being conducted, shall be punished by imprisonment in the state prison for five, seven, or nine years. Application of this section shall be limited to persons at least five years older than the minor to whom he or she prepares for sale, sells, or gives away a controlled substance."

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

### Cross References

Life sentence for person who has served two or more prior terms for certain drug offenses involving minors, see Penal Code § 667.75.

### Library References

Drugs and Narcotics ⇨133.  
Infants ⇨20.  
WESTLAW Topic Nos. 138, 211.

C.J.S. Drugs and Narcotics §§ 225 to 229.  
C.J.S. Infants §§ 95 to 107.

## § 11353.6. Juvenile Drug Trafficking and Schoolyard Act of 1988; additional punishment

(a) This section shall be known and may be cited as the Juvenile Drug Trafficking and Schoolyard Act of 1988.

(b) Any person 18 years of age or over who is convicted of a violation of Section 11351.5 or of Section 11352 or 11379.6, as those sections apply to paragraph (1) of subdivision (f) of Section 11054 or a conspiracy to commit such offense, where such violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high school or high school, shall receive an additional punishment of 3, 4, or 5 years at the court's discretion.

(c) Any person 18 years of age or older who is convicted of a violation pursuant to subdivision (b) which involves a minor who is at least four years younger than that person shall, as a full and separately served enhancement to that provided in subdivision (b), be punished by imprisonment in the state prison for 3, 4, or 5 years at the court's discretion.

(d) The additional terms provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(e) The additional terms provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(Added by Stats.1988, c. 1248, § 1.)

### Library References

Drugs and Narcotics ⇨68 to 70, 133.  
Infants ⇨20.  
WESTLAW Topic Nos. 138, 211.

C.J.S. Drugs and Narcotics §§ 164 to 173,  
225 to 229.  
C.J.S. Infants §§ 95 to 107.



## HEALTH AND SAFETY CODE

## § 11353.6

### Notes of Decisions

#### B. Intent

Defendant's mistake about age of person to whom he sold cocaine was not defense to charge of selling cocaine to a minor; specific intent for offense was intent to sell cocaine, not intent to sell to a minor, and ignorance as to person's age neither disproved intent nor negated evil design on part of defendant. *People v.*

*Williams* (App. 2 Dist.1991) 284 Cal.Rptr. 454, 233 Cal.App.3d 407.

Specific intent for crime of selling cocaine to a minor is intent to sell cocaine, not intent to sell it to a minor. *People v. Williams* (App. 2 Dist.1991) 284 Cal.Rptr. 454, 233 Cal.App.3d 407.

#### § 11353.1. Enhancement of sentence imposed under § 11353

### Historical and Statutory Notes

#### 1992 Legislation

Amendment of this section by § 1 of Stats.1992, c. 923 (A.B.1765), failed to become operative under the provisions of § 5 of that Act.

#### § 11353.5. Adult preparing for sale, selling, or giving controlled substance to minor upon school grounds, public playgrounds, churches, or synagogues; comparative ages of defendant and minor

### Historical and Statutory Notes

#### 1992 Legislation

Amendment of this section by § 2 of Stats.1992, c. 923 (A.B.1765), failed to become operative under the provisions of § 5 of that Act.

#### § 11353.6. Juvenile Drug Trafficking and Schoolyard Act of 1988; additional punishment

(a) This section shall be known, and may be cited, as the Juvenile Drug Trafficking and Schoolyard Act of 1988.

(b) Any person 18 years of age or over who is convicted of a violation of Section 11351.5, or of Section 11352, or 11379.6, as those sections apply to paragraph (1) of subdivision (f) of Section 11054, or of Section 11351, 11352, or 11379.6, as those sections apply to paragraph (11) of subdivision (c) of Section 11054, or of a conspiracy to commit \* \* \* one of those offenses, where the violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high \* \* \*, or high school during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, shall receive an additional punishment of 3, 4, or 5 years at the court's discretion.

(c) Any person 18 years of age or older who is convicted of a violation pursuant to subdivision (b) which involves a minor who is at least four years younger than that person \* \* \*, as a full and separately served enhancement to that provided in subdivision (b), shall be punished by imprisonment in the state prison for 3, 4, or 5 years at the court's discretion.

(d) The additional terms provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(e) The additional terms provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(g) "Within 1,000 feet of a public or private elementary, vocational, junior high, or high school" means any public area or business establishment where minors are legally permitted to conduct business which is located within 1,000 feet of any public or private elementary, vocational, junior high, or high school.

(Amended by Stats.1992, c. 989 (A.B.2124), § 1.)

Additions or changes indicated by underline; deletions by asterisks \* \* \*

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### **§ 11353.7. Adult preparing for sale, sale or gift of controlled substance to minor in public parks**

Except as authorized by law, and except as provided otherwise in Sections 11353.1, 11353.6, and 11380.1 with respect to playgrounds situated in a public park, any person 18 years of age or older who unlawfully prepares for sale in a public park, including units of the state park system and state vehicular recreation areas, or sells or gives away a controlled substance to a minor under the age of 14 years in a public park, including units of the state park system and state vehicular recreation areas, during hours in which the public park, including units of the state park system and state vehicular recreation areas, is open for use, with knowledge that the person is a minor under the age of 14 years, shall be punished by imprisonment in the state prison for three, six, or nine years.

(Added by Stats.1988, c. 1177, § 1. Amended by Stats.1990, c. 1665 (S.B.2112), § 3.)

#### **Historical and Statutory Notes**

The 1990 amendment inserted "and except as 11353.6, and 11380.1 with respect to playgrounds situated in a public park".

#### **Library References**

Drugs and Narcotics §§ 68 to 70, 133  
Infants § 20  
WESTLAW Topic Nos. 138, 211.

C.J.S. Drugs and Narcotics §§ 164 to 173,  
225 to 229.  
C.J.S. Infants §§ 95 to 107.

## RESTRICTED DANGEROUS DRUGS

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Grand (App. 5 Dist. 1990) 266 Cal.Rptr. 608, 217 Cal.App.3d 1533, review denied.

## § 11380

### § 11380. Adult using minor as agent; inducing minor to violate provisions; furnishing to minor; punishment

(a) Every person 18 years of age or over who violates any provision of this chapter involving controlled substances which are (1) classified in Schedule III, IV, or V and which are not narcotic drugs or (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (2) or (3) or subdivision (f) of Section 11054, or specified in subdivision (d), (e), or (f) of Section 11055, by the use of a minor as agent, who solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate any provision of this article involving those controlled substances or who unlawfully furnishes, offers to furnish, or attempts to furnish those controlled substances to a minor shall be punished by imprisonment in the state prison for a period of three, six, or nine years.

(b) Nothing in this section applies to a registered pharmacist furnishing controlled substances pursuant to a prescription.

(Added by Stats.1972, c. 1407, p. 3023, § 3. Amended by Stats.1973, c. 1078, p. 2186, § 25, eff. Oct. 1, 1973; Stats.1976, c. 1139, p. 5085, § 84, operative July 1, 1977; Stats.1984, c. 1635, § 70; Stats.1985, c. 3, § 9, eff. Jan. 29, 1985; Stats.1986, c. 248, § 145; Stats.1986, c. 1035, § 3; Stats.1986, c. 1044, § 23; Stats.1990, c. 1664 (A.B. 2645), § 5; Stats.1990, c. 1665 (S.B.2112), § 5.)

#### Historical and Statutory Notes

As added in 1972, the section read:

"Every person 18 years of age or over who violates any provision of this chapter involving controlled substances classified in Schedule III, IV, or V by the use of a minor as agent, who solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate any provision of this chapter involving controlled substances classified in Schedule III, IV, or V, or who unlawfully furnishes, offers to furnish, or attempts to furnish controlled substances classified in Schedule III, IV, or V to a minor shall be punished by imprisonment in the state prison for a period of 10 years to life and shall not be eligible for release upon completion of sentence or on parole or any other basis until he has been imprisoned for a period of not less than five years in the state prison.

"If such person has been previously convicted once of any felony offense described in this division, of a conspiracy to commit any offense described in this division, or of any offense under the laws of any other state or the United States which, if committed in this state, would have been punishable as a felony offense described in this division, the previous conviction shall be charged in the indictment

or information and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, he shall be imprisoned in the state prison for a period of 10 years to life and shall not be eligible for release upon completion of sentence or on parole or any other basis until he has been imprisoned for a period of not less than 10 years in the state prison.

"If such person has been previously convicted two or more times of any felony offense described in this division, of a conspiracy to commit any offense described in this division, or of any offense under the laws of any other state or the United States which, if committed in this state, would have been punishable as a felony offense described in this division, the previous convictions shall be charged in the indictment or information and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, he shall be imprisoned in the state prison for a period of 15 years to life and shall not be eligible for release upon completion of sentence or on parole or any other basis until he has been imprisoned for a period of not less than 15 years in the state prison.

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"Nothing contained in this section shall apply to a registered pharmacist furnishing controlled substances classified in Schedule III, IV, or V pursuant to a prescription."

The 1973 amendment designated the original four paragraphs as subds. (a), (b), (c), and (d); it rewrote subd. (a); it substituted in subds. (b) and (c) the words "offense described in subdivision (d)" for the words "felony offense described in this division, of a conspiracy to commit any offense described in this division, or of any offense under the laws of any other state or the United States which, if committed in this state, would have been punishable as a felony offense described in this division; it added subd. (d); and in subd. (c) following the words "controlled substances" it deleted the words "classified in Schedule III, IV, or V."

Following the 1973 amendment the section provided:

"(a) Every person 18 years of age or over who violates any provision of this chapter involving controlled substances which are (1) classified in Schedule III, IV, or V and which are not narcotic drugs or (2) which are specified in subdivision (d) of Section 11054, except paragraphs (10), (11), (12), and (17) of such subdivision, or specified in subdivision (d) of Section 11055, by the use of a minor as agent, who solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate any provision of this article involving such controlled substances or who unlawfully furnishes, offers to furnish, or attempts to furnish such controlled substances to a minor shall be punished by imprisonment in the state prison for a period of 10 years to life and shall not be eligible for release upon completion of sentence or on parole or any other basis until he has been imprisoned for a period of not less than five years in the state prison.

"(b) If such person has been previously convicted once of any offense described in subdivision (d), the previous conviction shall be charged in the indictment or information and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, he shall be imprisoned in the state prison for a period of 10 years to life and shall not be eligible for release upon completion of sentence or on parole or any other basis until he has been imprisoned for a period of not less than 10 years in the state prison.

"(c) If such person has been previously convicted two or more times of any offense described in subdivision (d) the previous convictions shall be charged in the indictment or information and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, he shall be imprisoned in the state prison for a period of

15 years to life and shall not be eligible for release upon completion of sentence or on parole or any other basis until he has been imprisoned for a period of not less than 15 years in the state prison.

"(d) Any previous conviction of any of the following offenses, of a conspiracy to commit such an offense, or of an offense under the laws of another state or of the United States which, if committed in this state, would have been punishable as such an offense, shall be charged pursuant to subdivision (b) or (c) of this section:

"(1) Any felony offense described in Section 11351, 11352, 11353, 11354, 11358, 11359, 11360, 11361, 11363, or 11366.

"(2) Any felony offense described in this article.

"(e) Nothing contained in this section shall apply to a registered pharmacist furnishing controlled substances pursuant to a prescription."

Resentencing for violations between March 7, 1973, and October 1, 1973, see Historical Note under § 11350.

The 1976 amendment deleted the punishment provisions following "state prison" in subd. (a) and substituted "for a period of three, four or five years"; deleted subds. (b) to (d); and relettered former subd. (e) to be subd. (b).

The 1984 amendment substituted, in the first paragraph, "except paragraphs (13), (14), (15), and (20) of subdivision (d)" for "except paragraphs (10), (11), (12), and (17) of such subdivision," and made nonsubstantive changes in wording.

The 1985 amendment substituted in the first paragraph "(20), (21), (22), and (23)" for "and (20)", and ", (e), or (f) of Section 11055, except paragraph (3) of subdivision (c) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f)," for "of Section 11055,"; substituted "Nothing in this section applies" for "Nothing contained in this section shall apply" in subd. (b); and made other nonsubstantive changes.

The 1986 amendment by c. 1044 inserted internal references to § 11054 relating to cocaine; and increased the penalty from 3, 4, or 5 years to 3, 5, or 7 years at the end of subd. (a).

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1990 amendment by c. 1665, in subd. (a), deleted the reference to paragraphs (21) to (23) following the reference to paragraph (20), deleted "except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f)," following "Sec-

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tion 11055", and substituted "three, six, or nine years" for "3, 5, or 7 years".

Under the provisions of § 8 of Stats.1990, c. 1665, the 1990 amendments of this section by c. 1664 and c. 1665 were given effect and incorporated in the form set forth in § 5 of c. 1665. An amendment of this section by § 4 of

Stats.1990, c. 1665, failed to become operative under the provisions of § 8 of that Act.

Derivation: Former § 11913, added by Stats. 1965, c. 2030, p. 4605, § 1, amended by Stats. 1969, c. 403, p. 937, § 3; Stats.1970, c. 1098, p. 1956, § 17; Stats.1971, c. 1748, p. 3758, § 43.6.

### Cross References

Convictions under this section, prohibition of probation or suspension of sentence, see Penal Code § 1203.07.

Fines, increment for each separate offense, see § 11372.5.

Life sentence for person who has served two or more prior terms for certain drug offenses involving minors, see Penal Code § 667.75.

Marijuana offenses, effect of prior conviction under this section, see § 11357 et seq.

Persons convicted of §§ 11351, 11351.5, or 11352, sentence enhancements for prior conviction of this section, see § 11370.2.

Peyote offenses, see § 11363.

### Library References

Criminal Law ⇨1200.

Drugs and Narcotics ⇨76, 133.

Infants ⇨20.

WESTLAW Topic Nos. 110, 138, 211.

C.J.S. Criminal Law § 1638.

C.J.S. Drugs and Narcotics §§ 172, 173, 181, 225 to 229.

C.J.S. Infants §§ 95 to 107.

### Notes of Decisions

#### Arrest 1

#### Instructions 2

#### 1. Arrest

Where mother informed narcotics investigator that she overheard telephone conversation in which her daughter made appointment to meet man after school in order to be taken to someone who would furnish her with methedrine, investigator who observed defendant with girl had probable cause to arrest defendant for inducing and encouraging minor to

violate law against possession of dangerous drugs, or for offering to furnish restricted dangerous drug. *People v. Bevins* (1970) 85 Cal. Rptr. 876, 6 C.A.3d 421.

#### 2. Instructions

In prosecution for using minor as agent to furnish amphetamines and dexadrine under this section description of offense in jury instruction using language of § 11353 prohibiting using minor to furnish other controlled substances was harmless error. *People v. Carbonie* (1975) 121 Cal.Rptr. 831, 48 C.A.3d 679.

### § 11380.1. Enhancement of sentence Imposed under § 11380

(a) Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of Section 11380, in addition to the punishment imposed for that conviction, shall receive an additional punishment as follows:

(1) If the offense involved phencyclidine (PCP), methamphetamine, or any analog of these substances and occurred upon the grounds of, or within, a church or synagogue, a playground, a public or private youth center, or a public swimming pool, during hours in which the facility is open for business, classes, or school-related programs, or at any time when minors are using the facility, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for one year.

(2) If the offense involved phencyclidine (PCP), methamphetamine, or any analog of these substances and occurred upon, or within 1,000 feet of, the

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grounds of any public or private elementary, vocational, junior high school, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility where the offense occurs, the defendant shall, as a full and separately served enhancement to any other enhancement provided in paragraph (3), be punished by imprisonment in the state prison for two years.

(3) If the offense involved a minor who is at least four years younger than the defendant, the defendant shall, as a full and separately served enhancement to any other enhancement provided in this subdivision, be punished by imprisonment in the state prison for one, two, or three years, at the discretion of the court.

(b) The additional punishment provided in this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(c) The additional punishment provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(d) Notwithstanding any other provision of law, the court may strike the additional punishment provided for in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(e) The definitions contained in subdivision (e) of Section 11353.1 shall apply to this section.

(f) This section does not require either that notice be posted regarding the proscribed conduct or that the applicable 1,000-foot boundary limit be marked.

(Added by Stats.1990, c. 1663 (A.B.3744), § 3; Stats.1990, c. 1664 (A.B.2645), § 6; Stats.1990, c. 1665 (S.B.2112), § 6.)

**Historical and Statutory Notes**

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.